

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

GERALD H. SELLERS,

: Plaintiff, Case No. 3:04-cv-368
-vs- : District Judge Walter Herbert Rice
Defendant. Chief Magistrate Judge Michael R. Merz

AUTOZONE,

:
Defendant.

REPORT AND RECOMMENDATIONS

This case is before the Court on Defendant's Motion to Dismiss for failure of Plaintiff to participate in discovery (Doc. No. 18). Upon the filing of that Motion, the Court advised Plaintiff of his obligation to respond not later than March 17, 2006; no response has been filed.

Defendant's Motion demonstrates that Plaintiff failed to provide responsive documents or answer interrogatories for more than a year and he failed to appear for his own deposition, despite adequate formal notice and despite being offered a number of opportunities to consult with Defendant's counsel on the particulars of the deposition. It appears that Plaintiff has abandoned this litigation. It is accordingly respectfully recommended that this action be dismissed without prejudice for want of prosecution.

March 21, 2006.

s/ Michael R. Merz
Chief United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).